the court proceeds upon the theory that the State's officers, far from having private interests to subserve, are engaged in the duty of securing equal justice to the State and the accused, and should not, accordingly, be hampered by "a rule without a reason." It is difficult to see, however, why this doctrine is not directly contrary to the prevailing notion that it is the prisoner, and not the State, who is entitled to every protection and advantage possible.

It is submitted that the Vermont court has failed in its attempt to bring the present case within the exception as to instrumental witnesses; for surely the State, like any other party, is "at liberty to choose and to call whomsoever it will." Apparently, therefore, the decision is squarely at variance with the general rule under discussion. That rule may be lessened in significance by restriction within narrow limits. The reasoning underlying it may be subject to criticism. But the rule itself still remains a principle of the common law, and should be abolished, if such action seems desirable, not by judicial decision, but by an act of the legislature.

ADMINISTRATION OF THE ESTATE OF A SUPPOSED DEAD MAN. — The administration in a probate court of the estate of a living man appears at first sight such a palpable absurdity, that it is astonishing that any one should contend for the validity of such a proceeding, and still stranger that any legislature should think of giving legal effect to it. Nevertheless, this has been done. In *Roderigas* v. *East River Savings Institution*, 63 N. Y. 460, the court, with the aid of a statute, refused to allow a distribution of a supposed decedent to be disturbed. This New York case, it is believed, stands absolutely alone. The recent case of *Carr* v. *Brown*, 38 Atl. Rep. 9 (R. I.), represents, however, an attempt to obtain the same result from a Rhode Island statute. This statute provides that when a man has been absent for seven years, and nothing heard from him during that time, the probate court shall have power to grant administration of his estate as if he were dead. The court refused to consider such an administration as valid, as against the supposed decedent, particularly on the ground that the statute is contrary to the provision of the Fourteenth Amendment to the United States Constitution, that no State shall deprive any person of his property "without due process of law." In support of this position they cite an overwhelming weight of authority. Nothing is better established than that, in the absence of statute, the jurisdiction of a probate court depends on the actual fact of the death of the person whose estate is to be dealt with. In point of theory, the question whether the judgment of the court ought, or ought not, to be conclusive on that fact is not so simple as it may appear. The judgment should be conclusive as to all the facts found in it, as against all parties to the suit. In the case of a judgment *in rem*, all persons are made parties for this purpose who have received either actual notice of the suit, or constructive notice from the public seizure of the property by the court. If a probate court proceeded *in rem*, and seized the property before giving judgment, then perhaps advertisement of the seizure might be held to give constructive notice of the suit to the absent owner, and he might be concluded from disputing the judgment. The probate court, however, has never been regarded as proceeding *in rem*, nor does it take possession of the property concerned before granting the letters of administration.

Whatever might be the effect of this Rhode Island statute, in the absence

of any constitutional restriction, it would seem clear that the Fourteenth Amendment makes it impossible to hold valid any administration of the estate of a living man. A probate court, which is essentially a court of very limited jurisdiction, acting without a jury, has never been legally empowered to meddle with the goods of any living person, nor can it do so by any "due process of law."

NATURAL GAS — POLICE POWER. — The Supreme Court of Indiana has decided in the case of *Townsend* v. *State*, 47 N. E. Rep. 19 (Ind.), that an act forbidding the burning of natural gas in flambeau lights is not unconstitutional; being a legitimate exercise of the police power. It is possible to agree with the decision of the court on the ground that the law is simply a prohibition of the use of property in a manner contrary to public policy. This, however, does not at all imply a concurrence in what seems to be the chief ground for its decision. This is based chiefly on the analogy, drawn by a Pennsylvania court in *Gas Co.* v. *De Witt* (130 Pa. 235), between water, gas, and oil, and animals *feræ naturæ*, in that each of these substances becomes private property only on being reduced to actual possession, and the State, as holding the property for the benefit of the people at large, may decide on what terms it shall be reduced to private possession. So far, this analogy, although at first sight fanciful, seems quite correct on principle. *Gas Co.* v. *De Witt*, *supra*; *Gas Co.* v. *Tyner*, 131 Ind. 277; Gould, Waters, 2d ed., § 291.

When the court comes to its conclusion, however, the argument by analogy fails. The court reasons that, as the game laws, which regulate the capture of animals *feræ naturæ*, have been held constitutional, this present law, which regulates the use of a mineral "*feræ naturæ*," must also be held constitutional. It is submitted that the argument of the court is not sound. The scope and aim of the two laws are quite different. If the Indiana statute were analogous to the game laws, it would have for its subject matter the regulation of the conditions on which, or the ways by which, individuals could take possession of portions of the natural gas of the State. It does nothing of the sort. It does not at all deal with the question of how, or under what conditions, natural gas may become individual property. Assuming that the gas has already been reduced to possession, it concerns itself only with the manner in which he who has become the owner shall use his property. For this reason it would seem that while the decision of the court, as said above, may be correct, the analogy which forms its chief support in the opinion is of no value.

THE RIGHT TO USE THE MAILS. — The United States Circuit Court has recently rendered an interesting decision relating to the right of a citizen to use the government mail system. In the case of *Hoover* v. *McChesney*, 81 Fed. Rep. 472, the plaintiff, secretary of the Southern Mutual Investment Company, claimed that the defendant, a postmaster, wrongfully refused to deliver his mail. The defendant admitted the withholding, but justified it by two orders of the Postmaster General, alleged to be issued, in pursuance of certain acts of Congress, because the Postmaster General believed the company and the plaintiff were engaged in conducting a lottery contrary to law. The court held that the defendant was justified in withholding mail matter addressed to the